

Remarks

Claims 1-6 and 9-15 are in the case. The grounds of rejection are traversed.

An information disclosure statement listing all patents, publications or other information submitted for consideration by the Office is being submitted with this response.

Claims 1-6 and 9-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sarkisian et al. (U.S. Patent 5,658,347). Applicant traverses on grounds that a prima facie showing of obviousness has not been established. The cited reference does not disclose all of the elements of the claimed invention. Applicant requests clarification of the Examiner's position, or, alternatively, a notice of allowance.

The Examiner interprets Sarkisian et al. as disclosing an acetabular component 10 that is inherently at least capable of being used as both a primary and revision component and of being used with a resurfacing and replacement component, citing Sarkisian Fig. 1 and col. 1, lines 13-23. The Examiner notes that the Sarkisian acetabular component is linerless. The Examiner takes the position that Sarkisian et al. discloses implanting and using the acetabular component, but does not explicitly disclose the order in which the resurfacing or replacement femoral component is used. The Examiner concludes that it would have been very obvious to one having ordinary skill in the art to have left the correctly functioning acetabular component alone while replacing loose or damaged femoral components, since it is within the knowledge generally available in the art that unnecessary surgery is never encouraged.

Applicant requests clarification of the Examiner's position. As far as applicant can determine, Sarkisian makes no mention of the various steps in applicant's claimed method. The cited portion of Sarkisian (col. 1, lines 13-23) appears at the beginning of the "background of the invention" section of the reference and merely provides general information about reconstruction of the acetabulum. Sarkisian describes a cemented acetabular cup that has an unusual rigid keel structure, along with a method of preparing a natural acetabulum to receive the cup. Sarkisian makes no mention of revision procedures or of bone conserving philosophies. It is therefore not clear to applicant why Sarkisian has been cited as the sole basis of a showing of obviousness, or why the teachings of Sarkisian would somehow render applicant's claimed invention obvious.

In *KSR Int'l Co. v. Teleflex, Inc.*, 127 S.Ct. 1727, 882 USPQ.2d 1385 (2007), the Supreme Court recently emphasized "the need for caution in granting a patent based on the combination of elements found in the prior art." *Id.*, 127 S.Ct. at 1739. However, the cited

Sarkisian reference simply does not disclose numerous elements of the claimed surgical methods. In the absence of requisite teachings in the cited reference, it is respectfully suggested that applicant's specification is being used to supply the elements through hindsight reconstruction of the claimed invention.

Sarkisian teaches away from the claimed invention by describing a cemented cup implant. Under current bone conserving philosophies, cemented cups are not considered bone conserving, but rather are reserved for use in later revision surgeries or when initial acetabular bone stock is poor. See e.g. U.S. Patent 4,976,740, column 1, line 54-column 2, lines 46, which was incorporated by reference into the present application, and which describes the use of non-cemented implants to conserve bone stock for use in future revision surgery. The uniqueness of applicant's claimed surgical method lies not in the implant components themselves, but in the recognition that by using a planned sequence of bone conserving surgeries over a long period of time,¹ significantly better long term results can be achieved for a relatively small number of younger patients.² The method of the claimed invention would reserve the use of a cemented cup for a much later revision surgery, and would use a cemented cup only if it became necessary to replace a non-cemented cup *and* insufficient bone stock remained for implantation of a non-cemented revision cup. Thus, if the Sarkisian cup were used in the claimed method, it would be used in a fourth or fifth surgery. It is important to note, however, that a primary goal of the invention is to delay the degeneration of acetabular bone by using a bone conserving step-wise approach, and therefore that the most successful applications of the claimed method will allow patients to complete a lifetime of hip therapy without the necessity of resorting to cemented implants such as the type described in Sarkisian.

Considering the foregoing, it is respectfully suggested that a prima facie showing of obviousness has not been established. Applicant suggests claims 1-6 and 9-15 are now in a condition for allowance. If a telephone conference might be of assistance in moving this case forward, undersigned would welcome an opportunity to speak with the Examiner.

¹ As indicated in Figure 3, the successive surgeries in the claimed method are likely to take place 10-20 years apart. Practically speaking, this means that any resulting patent will likely be expired by the time all of the claimed steps are carried out.

² The claimed methods will not be applicable to most hip implant recipients, the vast majority of whom are older individuals. Older patients typically are not candidates for femoral head resurfacing, but instead start out by receiving a total hip implant of the type shown in Figure 2(c).

This amendment has been filed with a petition for a one month extension of time. It is believed that no further extension of time is therefore required, but if an extension is required, applicant hereby requests an appropriate extension of time. It is further believed that no fees are due, but if any fees or credits are due, the Commissioner is authorized to charge or deposit them to Deposit Account No. 502795.

Respectfully submitted,

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Dated: July 31, 2007